(1)

Supreme Court, U.S.
FILED

00 622 OCT 16 2000

OFFICE OF THE CLERK

No. _____

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

JOSEPH R. PUGH, AS TRUSTEE FOR
WILLIAM AND ELIZABETH PUGH, *Petitioner*,

v.

HIGGENBOTHAM AUCTIONEERS INTERNATIONAL,
LTD., INC.,
WILLARD E. ROE, AND
WM. G. ROE & COMPANY, INC., *Respondents*.

ON APPEAL TO THE SECOND DISTRICT COURT OF APPEAL FOR FLORIDA

PETITION FOR A WRIT OF CERTIORARI

JORYN JENKINS, ESQUIRE
Florida Bar No. 366072
JORYN JENKINS & ASSOCIATES
3839 West Kennedy Boulevard
Tampa, Florida 33609
Phone 813/870-3839
Counsel for Petitioner

October 2000

45 pp

QUESTION PRESENTED

Whether 11 U.S.C. § 327, which provides that "the trustee, with the court's approval, may employ. . . auctioneers . . . to represent or assist the trustee in carrying out the trustee's duties under this title," enables trustees, bankruptcy courts, auctioneers, and owners of land to perpetuate constructive fraud upon the public, and especially upon the disabled, by providing for judicial approval of the sale of land by auction in states that do not recognize oral contracts for the sale of land.

TABLE OF CONTENTS

QUESTION PRESENTED 2

TABLE OF AUTHORITIES 4

OPINIONS BELOW 6

JURISDICTION 6

STATUTORY PROVISIONS INVOLVED 7

STATEMENT 9

A. The Bankruptcy Court and Its Auction 11
B. The Bankruptcy Auction and the Disabled Petitioner 17

APPENDIX 24

TABLE OF AUTHORITIES

CASES

Jenkins v. State, 385 So. 2d 1356, 1357 (Fla. 1980).....7
Price v. Johnston, 334 U.S. 266 (1948).....11
Thorpe v. Housing Authority, 386 U.S. 670 (1967).....10
Youakim v. Miller, 425 U.S. 231, 234 (1976).....9
Zaconick v. City of Hollywood, 85 F. Supp. 25 (S.D. Fla. 1949).....14, 15

STATUTES

11 U.S.C. § 327.....2, 8, 9, 11, 12
11 U.S.C. § 327(a).....8, 9, 11, 12
28 U.S.C. § 1257(a).....7
28 U.S.C. § 2075.....22
28 U.S.C. § 2403(a).....7
42 U.S.C. § 12101(a)(1).....21
42 U.S.C. § 12101(b)(3).....21
42 U.S.C. § 12182 (a).....8, 17, 18
42 U.S.C. § 12182 (b)(2)(A)(ii).....8,18,19

RULES

Fla. R. Civ. P. 1.190.....11

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

JOSEPH R. PUGH, AS TRUSTEE FOR

WILLIAM AND ELIZABETH PUGH, *Petitioner*,

v.

HIGGENBOTHAM AUCTIONEERS INTERNATIONAL,

LTD., INC.,

WILLARD E. ROE, AND

WM. G. ROE & COMPANY, INC., *Respondents*.

ON APPEAL TO THE SECOND DISTRICT COURT OF

APPEAL FOR FLORIDA

Joseph R. Pugh, as trustee for William and Elizabeth Pugh, respectfully petitions for a writ of *certiorari* to review the judgment of the Second District Court of Appeal for Florida in this case.

OPINIONS BELOW

The opinion of the court of appeal (App., *infra*, 1a-2a) is unreported. The opinion of the district court (App., *infra*, 3a-4a) is unreported.

JURISDICTION

The Circuit Court of the Tenth Judicial Circuit in and for Polk County, State of Florida granted Respondent's Motion for Summary Judgment on January 26, 1999. The Second District Court of Appeal of the State of Florida entered its *per curiam* affirmance on February 11, 2000. On June 5, 2000, the Supreme Court of Florida denied

jurisdiction, citing *Jenkins v. State*, 385 So. 2d 1356, 1357 (Fla. 1980) (Florida Supreme Court lacks jurisdiction to review "*per curiam* affirmed" decisions of Florida appellate courts.) On September 5, 2000, Justice Kennedy granted an extension of time within which to file this petition for writ of *certiorari* to this Court to and including October 16, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). 28 U.S.C. § 2403(a) applies and the Solicitor General has been served with this petition.

STATUTORY PROVISIONS INVOLVED

Section 12182 of the Americans with Disabilities Act of 1990, provides, in relevant part, that no individual shall be "[d]iscriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns,

leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a). The act also provides that "[d]iscrimination includes . . . failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities. 42 U.S.C. § 12182(b)(2)(A)(ii). 11 U.S.C. § 327 provides that "the trustee, with the court's approval, may employ one or more . . .auctioneers . . . to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a).

STATEMENT

Petitioner initiated a suit in September 1997 in the Circuit Court of the Tenth Judicial Circuit in and for Polk County, State of Florida. Although federal questions existed in September 1997, Petitioner could not raise them because it was not until March 1998 that an administrative law judge determined that Petitioner, Joseph R. Pugh, was disabled, retroactively to 1994, well before Petitioner's cause of action had arisen (App., *infra*, 5a). Had the determination been made and Petitioner received notification of his disabled status earlier, he could have presented the federal questions that are now before this Court during the suit below.

This Court has previously recognized that although it "does not decide questions not raised or resolved in the lower court . . . the rule is not inflexible." *Youakim v.*

Miller, 425 U.S. 231, 234 (1976). In *Youakim*, the Court stated that "[n]either the appellants nor the District Court had the benefit of either of these developments when the case was in the lower court." *Id.* at 235. The developments to which the Court referred in *Youakim* were a newly issued instruction from the Department of Health, Education, and Welfare, and a statement filed by the Solicitor General to this Court. *Id.* In *Youakim*, this Court cited *Thorpe v. Housing Authority*, 386 U.S. 670 (1967), stating "the Court remanded [that] case for reconsideration in light of a supervening administrative directive which was issued by federal authorities." *Id.* at 237. Here, an administrative law judge announced a supervening decision that applied retroactively to Petitioner. Therefore, although a federal question existed when Petitioner filed suit, it could not properly be pled during that suit.

In *Price v. Johnston*, 334 U.S. 266 (1948), this Court, in granting *certiorari*, noted "the procedure followed in the District Court in the instant proceeding precluded a proper development of the issue . . ." *Id.* at 293. Here, under Florida Rule of Civil Procedure 1.190, Petitioner could not amend the pleading seven months after the suit was initiated. Therefore, the issue was not properly developed. As in *Price*, the Court should make an exception in this circumstance.

A. The Bankruptcy Court and Its Auction

This case involves the use of real property auctions in Title 11 bankruptcy proceedings in light of the Statute of Frauds. 11 U.S.C. § 327 provides that "the trustee, with the court's approval, may employ one or more . . . auctioneers. . . to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a).

The debtor, Respondent Wm. G. Roe & Company, had petitioned the United States Bankruptcy Court, Middle District of Florida, Tampa Division, for "Authority to Approve Auction Sale" of real property in Polk County, Florida. The bankruptcy court authorized the auction in Polk County, Florida (App., *infra,* 6a-7a). The debtor, Respondent Wm. G. Roe & Company, had also petitioned the court for authorization to employ a promoter for the auction, and the bankruptcy court authorized the employment of the promoter (App., *infra*, 8a-9a). Respondent auctioneer, Higgenbotham, distributed a brochure describing the real property with the words "Court Approved Auction" throughout the brochure. (App., *infra,* 10a).

At the auction, by telephone, Petitioner Pugh, as trustee for William and Elizabeth Pugh, submitted a bid for

Parcel 3B, described in the brochure. The auctioneer accepted the bid, the gavel fell, and the auctioneer announced a sale from the auction block. Petitioner Pugh subsequently tendered consideration for the purchase of the property. The auctioneer returned the consideration and informed Petitioner that the offer was not accepted (App., *infra*, 11a-17a). Furthermore, the bankruptcy court could have, within 10 days of Petitioner Pugh's bid, as permitted by the Bankruptcy Code, and detailed in the auction agreement, refused to honor the bid (App., *infra*, 18a-19a).

The final disposition of the subject property in this case is troublesome. Petitioner Pugh does not possess the property. Although all of the elements of a contract existed, i.e. Petitioner Pugh's verbal offer, Respondent Higgenbotham's acceptance (the gavel fell and the auctioneer declared the property is sold), and consideration

was offered (Petitioner tendered a check), the contract was made illusory. It was made illusory because the seller or the bankruptcy court could, and the seller did unilaterally rescind the oral contract. It was illusory because "sold" did not mean sold. "Sold" meant maybe the property was sold; maybe it was not sold. This phenomenon runs counter to plain language meaning, results in constructive fraud, and contradicts the understanding of at least one United States District Court.

In *Zaconick v. City of Hollywood*, 85 F. Supp. 25 (S.D. Fla. 1949), the court observed the following:

> One of the essential features of a sale at public auction is that at the fall of the auctioneer's gavel or gavel . . . there is a completed sale. Thereafter, neither the seller nor the buyer may legally withdraw from or rescind the transaction without the

> consent of the other. There is a binding contract. *Id.* at 54.

Petitioner in this case believed that a binding contract was created when the auctioneer's gavel fell. Interpreting the auction transaction with the same standard as that used by the *Zaconick* Court would lead one to believe that there was a binding contract when the gavel fell and that one could act upon that belief. But not only could the seller withdraw from or rescind the transaction, the bankruptcy court could rescind the contract as well. The reason? The Statute of Frauds. The Statute of Frauds prevents enforcement of a contract for the sale of real property that is not signed by the party against whom the contract is being enforced. Florida has codified the Statute of Frauds (App., *infra*, 20a). Consequently, in this context, an oral contract for the sale of land cannot be enforced in Florida.

The trial court granted summary judgment for Respondents, the auctioneer and the seller, orally explaining that:

> an auction . . . it's, quote, unquote, an oral contract . . . the Statute of Frauds apply in the sale of real estate in Florida . . . except for the rare exception of part performance that requires specific performance . . .in order to remove an oral contract for sale of land from effective Statute of Frauds because of part performance, there must be proof that an oral contract was made, that all or part of the consideration was paid, and . . .that the purchaser made valuable and permanent improvements on the land with the consent to the vendor.

Because of the operation of the Statute of Frauds, Petitioner never possessed a legally enforceable oral

contract for the sale of land. In a bankruptcy auction of real property, no person can possess a legally enforceable oral contract for the sale of land in Florida. This is also true for other states that adhere to the strictures of the Statute of Frauds.

B. The Bankruptcy Auction and the Disabled Petitioner

In March 1998, an administrative law judge decided that Petitioner was disabled. The judge determined that the disability had existed since before the date of the bankruptcy auction (App.,*infra*,5a). This retroactive judicial disability determination means that at the time of the auction, Petitioner was disabled. According to 42 U.S.C. § 12182(a), no individual shall be:

> Discriminated against on the basis of disability in the full and equal enjoyment of the

> goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

Certainly a bankruptcy auction qualifies as a public accommodation under 42 U.S.C. § 12182. Under 42 U.S.C. § 12182 (b)(2)(A)(ii), discrimination includes:

> A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities. . .

Although disabled, Petitioner was afforded the opportunity to attend the auction by telephone and to enter a telephonic bid from his home. However, Petitioner did

not hear the vital terms of sale that those individuals physically present at the auction heard. Those terms were that the sale was subject to confirmation by the seller. Had Petitioner been present on the auction floor, he would have heard the terms Respondents now use to avoid the sale of the subject property. Because of Petitioner's disability, he was unable to attend the auction and unable to hear the terms. This is the direct result of "a failure to make reasonable modifications" in the auction procedure. *See* 42 U.S.C. § 12182 (b)(2)(A)(ii).

THE QUESTION PRESENTED IS IMPORTANT

If an oral contract for the sale of land cannot be enforced in Florida, a Florida bankruptcy auction of real property is constructive fraud. It is constructive fraud because when the gavel falls and the auctioneer says "sold," an illusory, unenforceable, oral contract is

"formed." Although the bidder may believe his or her bid has been accepted, and may change his or her position in reliance upon that belief, i.e. that he or she is buying the subject property, this is only reality to the buyer. It is not the reality of the auctioneer, of the seller, or of the bankruptcy court.

This is not an isolated event. Every year, auctioneers proffer thousands of parcels of real estate on the auction blocks in Florida, as well as in other states, in bankruptcy proceedings. Many states adhere to the strictures of the Statute of Frauds when a party seeks to enforce an oral contract for the sale of land. Therefore, every year, the bankruptcy courts throughout this nation, their trustees, the auctioneers, and the sellers engage in widespread fraud.

This fraud is especially problematic for the disabled. Congress found that "some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older." 42 U.S.C. 12101 (a)(1). The potential impact of fraudulent auctions on disabled individuals similar to Petitioner is huge. The purpose of much Federal legislation concerning the disabled is to "ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities." 42 U.S.C. § 12101(b)(3). It would be unfortunate if the same government that strives to be the benchmark of accommodation only serves to be a greater hindrance.

In this real property auction case, the existence of the Statute of Frauds, in effect, transformed a "binding

contract" into an illusory contract. Eliminating the Statute of Frauds is not an option. Florida has incorporated the Statute of Frauds by statute (App., *infra*, 20a). Eliminating widespread constructive fraud by the bankruptcy court by eliminating land sale auctions in Title 11 bankruptcies in Florida is an option. This Court has such a power. through 28 U.S.C. § 2075, which grants this Court "the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under Title 11." Because this case involves a Title 11 practice, this Court should grant review to ensure that this Court has not prescribed rules that "abridge, enlarge, or modify any substantive right." 28 U.S.C. § 2075.

For the reasons set forth above, Petitioner respectfully requests that this Court grant the petition and

review the judgment below and grant *certiorari* review of this matter.

APPENDIX

Opinion of the Second District Court of Appeal of Florida..... 1a, 2a

Judgment of the Circuit Court of the Tenth Judicial Circuit In and For Polk County, Florida..... 3a, 4a

Decision of the Administrative Law Judge.....5a

Bankruptcy Court Order Approving Application for Authorization To Employ Higgenbotham Auctioneers as Broker..... 6a,7a

Bankruptcy Court Order Approving Application for Authorization to Employ Promoter Of Auction 8a,9a

Actual Text from Higgenbotham Auctioneers Brochure..... 10a

Affidavit of Joseph R. Pugh..... 11a-17a

Excerpts from Auction Agreements..... 18a,19a

Excerpt from Florida Statute of Frauds 725.01 ...20a

IN THE DISTRICT COURT OF
APPEAL OF FLORIDA
SECOND DISTRICT

JOSEPH R. PUGH, as Trustee for William and Elizabeth Pugh,	)	
Appellant,	)	CASE NO. 2D99-1288
v.	)	
HIGGENBOTHAM AUCTIONEERS INTERNATIONAL, LTD., INC., and WILLARD E. ROE and WM. G. ROE & COMPANY, INC.	)	
Appellees.	)	

Opinion filed February 11, 2000

Appeal from the Circuit court for Polk County;
Harvey A. Kornstein, Judge

Stephan L. Evans, Plant City, for Appellant.

Joseph J. Nolan of Joseph J. Nolan, P.A.,
Lakeland, for Appellee Higgenbotham
Auctioneers International, Ltd., Inc.

Douglas A. Lockwood, III, of Peterson & Myers, P.A., Winter Haven, for Appellees Willard E. Roe and Wm. G. Roe & Company, Inc.

PER CURIAM.

Affirmed

BLUE, A.C.J. and GREEN and DAVIS, JJ., Concur.

IN THE CURCUIT COURT OF THE TENTH JUDICIAL CURCUIT IN AND FOR POLK COUNTY, FLORIDA

JOESPH R. PUGH, as trustee for
William and Elizabeth Pugh,

Plaintiff,

v.

CASE NO: GC-G-97-2965
Section 7

HIGGENBOTHAM AUCTIONEERS INTERNATIONAL, LTD, INC. WILLARD E. ROE, and WM. G. ROE & COMPANY, INC.,

Defendants.

_____/

SUMMARY JUDGMENT FOR DEFENDANTS AND DENIAL OF MOTION OF SUMMARY JUDGMENT FOR PLAINTIFF

THIS CAUSE was considered on the Defendant's motion for summary judgment and the Plaintiff's motion for summary judgment, and after consideration of the motions, the affidavits submitted in support thereof, and the pleadings, it is

ORDERED AND ADJUDGED as follows:

1. Plaintiff's motion for summary judgment is denied.
2. Summary judgment is entered in favor of the Defendants and the Plaintiff shall take nothing by this action.
3. The court reserves jurisdiction on the issue of costs and attorney's fees.

DONE AND ORDERED in Chambers at Bartow, Polk County, Florida, this 25th day of February, 1999.

HARVEY A. KORNSTEIN, Circuit Judge

Joe R. Pugh

267-23-0367

DECISION

It is the decision of the Administrative Law Judge that, based on the application filed on January 3, 1994, the claimant has been disabled under Sections 1602 and 1614 (a) (3) (A) of the Social Security Act since December 1, 1994, but not prior thereto, and the claimant's disability has continued at least through the date of this decision.

Milton J. Carp

Administrative Law Judge

March 20, 1998

Date

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

WM. G. ROE & COMPANY	Case No. 96-8135-8C1
WM. G. ROE & SONS, INC.	Case No. 96-8135-8C1

Debtor

ORDER APPROVING APPLICATION FOR AUTHORIZATION TO EMPLOY HIGGENBOTHAM AUCTIONEERS AS BROKER AND APPROVING COMMISSION

THIS CASE came on for consideration upon the Debtor's Application for Authorization to Employ Higgenbotham Autcioneers (sic) as Broker and to Approve Commission (the "Application"). The Court, having reviewed the Application and the Affidavit of Tom J. Haney, finds that the Application is with merit and should be approved. Therefore, it is ORDERED:

1. The Debtor's Application for Authorization to Employ Higgenbotham Auctioneers as Broker is hereby approved.
2. The Debtor is authorized to employ Higgenbotham Auctioneers as Broker for the purposes of performing the services set forth in the application.
3. The Debtor is authorized to pay a broker's commission equal to 10% of the purchase price to Higgenbotham Auctioneers upon the sale of the Property.

DONE AND ORDERED at Tampa, Florida on September 16, 1996.

C. TIMOTHY CORCORAN, III
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

WM. G. ROE & COMPANY	Case No. 96-8135-8C1
WM. G. ROE & SONS, INC.	Case No. 96-8135-8C1

Debtor

ORDER APPROVING APPLICATION FOR AUTHORIZATION TO EMPLOY BRENMAR ADVERTISING, INC. AS ADVERTISER AND PROMOTER OF AUCTION

THIS CASE came on for consideration upon the Debtor's Application for Authorization to Employ Brenmar Advertising, Inc. as Advertiser and Promoter of Auction (the "Application"). The Court, having reviewed the Application and the Affidavit of Roger Hall finds that the Application is with merit and should be approved. Therefore, it is ORDERED:

1. The Debtor's Application for Authorization to Employ Brenmar Advertising, Inc. as Advertiser and Promoter

of Auction is hereby approved.

2. The Debtor is authorized to employ Brenmar Advertising, Inc. for the purposes of performing the services set forth in the application.

3. The Debtor is authorized to pay Brenmar Advertising, Inc. its fee set forth in the Application.

DONE AND ORDERED at Tampa, Florida on September 16, 1996.

C. TIMOTHY CORCORAN, III
United States Bankruptcy Judge

Court Approved

Friday, May 30 and 31

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, STATE OF FLORIDA
CIVIL DIVISION

JOSEPH R. PUGH, as trustee
For William and Elizabeth Pugh,

Plaintiff,

-vs-

Case No. G-97-2465
Division: Sec 7

HIGGENBOTHAM AUCTIONEERS INTERNATIONAL, LTD., INC.,
WILLARD E. ROE, and
WM. G. ROE & COMPANY, INC.,

Defendants.

AFFIDAVIT OF JOSEPH R. PUGH

STATE OF FLORIDA

COUNTY OF Hillsborough

BEFORE ME, the undersigned authority, personally appeared Joseph R. Pugh, who, after being first duly sworn, deposes and says:

(1) My name is Joseph R. Pugh.

(2) The contents of this affidavit are based on my

personal knowledge of the transactions in question.

(3) I am a resident of Hillsborough County, Florida.

(4) I live at 2829 Albritton Road East, Plant City, Florida 33565.

(5) My home telephone number is (813) 754-6303.

(6) Adam M. Wolfe, Esquire prepared this affidavit after speaking to me on the telephone and in person.

(7) Adam M. Wolfe, Esquire sent me a draft of this affidavit and he gave me the opportunity to make whatever changes or additions which I felt were needed to adequately describe what I know about the incident described in the complaint.

(8) On May 30, 1997, at approximately 12:45 p.m.,

I telephoned Higgenbotham Auctioneers International, Ltd., Inc. regarding an auction of real property that was taking place that afternoon. Mr. Higgenbotham was not available, so I was told that he would contact me shortly.

(9) At approximately 1:04 p.m., Mr. Higgenbotham contacted me at my parents home using his mobile phone, telephone number (941) 647-6572. At that time we discussed my eligibility to bid for parcel 3B as listed in the brochure by telephone. At no time during that conversation, nor during any previous or subsequent conversation with Mr. Higgenbotham or anyone associated with Higgenbotham Auctioneers was I informed of any opening remarks or additional terms of the auction.

(10) At approximately 1:34 p.m., an agent or employee of Mr. Higgenbotham contacted me again at my parent's home to inform me that I could participate in the auction by telephone. The agent or employee was using Mr. Higgenbotham's mobile phone, telephone number (941) 647-6572.

(11) At no time was I physically present at the auction conducted by Higgenbotham Auctioneers on May 30, 1997 on behalf of the Roe family.

(12) At no time prior to or during the auction did anyone from Higgenbotham Auctioneers International, Ltd.,Inc., inform me of any announcements made from the auction block regarding any contingencies. Additionally, I never heard any opening remarks made by the auctioneer.

(13) By telephone, I started the bidding for Parcel 3B with an opening offer of $40,000.00. I bid upon the property with the expectation that should I have the high bid, and should I timely tender the ten percent (10%) deposit, then I would own the property upon timely tendering the balance of the bid price.

(14) I was the high bidder on parcel 3B, which is confirmed by the audiotape of the auction, created by Higgenbotham Auctioneers.

(15) After learning that I was the high bidder, I elected to settle a worker's compensation claim in which I was involved. The sum I accepted was substantially less than the amount I believed to be the true value of the case, but I accepted the lesser amount in order to purchase the property. If at any time prior to this auction I was informed that my high

bid was contingent upon the acceptance of the seller, I would not have settled my worker's compensation claim for the amount I ultimately accepted.

(16) Representatives of Higgenbotham Auctioneers were aware that I was going to settle the worker's compensation claim in order to obtain the money necessary to purchase the property. At no time did any of these representatives orally inform me that my bid still needed the acceptance of the seller.

(17) I tendered the ten percent (10%) deposit in a timely manner.

(18) On June 4, 1997, the seller, Willard E. Roe and Wm. G. Roe & Company, Inc. rejected my bid, and refused to tender the subject parcel. Additionally, at this time I learned that my check had never been placed in an escrow

account.

FURTHER AFFIANT SAYETH NOT.

_____

JOSEPH R. PUGH

EXCERPT OF AUCTION AGREEMENT BETWEEN WILLIAM G. ROE & SONS, INC., WILLIAM G. ROE & COMPANY AND ADVERTISING COMPANY

Agreement subject to approval of the United States Bankruptcy Court, Middle District of Florida, Tampa Division.

EXCERPT OF AUCTION AGREEMENT BETWEEN WILLIAM G. ROE & CO. AND HIGGENBOTHAM AUCTIONEERS INTERNATIONAL LIMITED INC.

This agreement and the subsequent auction high bid shall be subject to the approval of the United States Bankruptcy Court, Middle District of Florida, Tampa Division.

EXCERPT FROM FLORIDA STATUTES

CHAPTER 725.01; PROMISE TO PAY ANOTHER'S DEBT, ETC.

No action shall be brought whereby to charge any executor or administrator upon any special promise to answer or pay any debt or damages out of her or his own estate,...or upon any contract for the sale of lands...unless the agreement or promise upon which such action shall be brought, or some note or memorandum thereof shall be in writing and signed by the party to be charged therewith or by some other person by her or him thereunto lawfully authorized.

JORYN JENKINS, ESQUIRE
Florida Bar No. 366072
JORYN JENKINS & ASSOCIATES
3839 West Kennedy Boulevard
Tampa, Florida 33609
Phone 813/870-3839
Counsel for Petitioner